UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In the Matter of:	:	Case No. 16-55712
	:	
David Michael Crotty and	:	Chapter 7
Teresa Sue Crotty	:	
	:	
Debtors.	:	Judge C. Kathryn Preston

MOTION BY DAVID M. WHITTAKER, TRUSTEE, FOR AN ORDER REQUIRING ADAM LONCZAK TO (1) APPEAR AND BE EXAMINED PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 AND (2) PRODUCE DOCUMENTS

David M. Whittaker, Trustee (the "Trustee"), moves the Court to issue an Order pursuant to the provisions of 11 U.S.C. §105 and pursuant to Bankruptcy Rules 2004, 4002, 7004, 7034, 7045, 9014, 9016, 9020, and Local Bankruptcy Rule 4002-1 granting the following relief:

1. The Trustee requests that the Court enter an Order requiring Adam Lonczak, a Field Claims Representative for Auto-Owners Insurance (the "Insurance Representative"), to appear and be examined by the Trustee pursuant to the provisions of Federal Rule of Bankruptcy Procedure 2004 (the "Rule 2004 Examination").

2. The Rule 2004 Examination will concern the Insurance Representative's interactions with David Michael and Teresa Sue Crotty (the "Debtors"), including all insurance claims made by the Debtors with Auto-Owners Insurance regarding the real property at 84 Old Elm Road, Chillicothe, OH 45601 (the "Real Property") and personal property of the Debtors located at the Real Property (the "Insurance Claims").

3. The Trustee requests that the Rule 2004 Examination be held at the following date, time and place:

Place of the Rule 2004 Examination:

Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215

Date and Time of the Rule 2004 Examination:

June 6, 2017 at 11:00 a.m.

4. The Trustee further requests that the Court enter an Order requiring the Insurance Representative to bring the following documents to the Rule 2004 Examination:

All documents relating to any insurance policy by which Auto-Owners Insurance agreed to insure the Real Property and its contents (the "Insurance Policy") and/or the Insurance Claims, including but not limited to:

A. Copy of the Insurance Policy;

B. Copies of the Insurance Claims;

C. Copies of all correspondences between Auto-Owners Insurance and Debtors regarding the Insurance Claims;

D. Copies of all reports, inspections, appraisals, photographs or other information in the possession of Auto-Owners Insurance regarding the Real Property and its contents or the Insurance Claims.

The foregoing is referred to as the "Requested Documents."

5. The Trustee further requests that the Court enter an Order determining that service of the Order granting this Motion shall be made by the Clerk or BNC upon the Debtors and the Insurance Representative by U.S. mail and that service in this manner shall be effective for all purposes related to this Motion and for purposes of the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules.

A Memorandum in support of this Motion follows.

Respectfully submitted,

/s/ *David M. Whittaker*
David M. Whittaker, Esq. (0019307)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215
Phone: (614) 227-2355
Fax: (614) 227-2390
dwhittaker@bricker.com
Attorney for David M. Whittaker, Trustee

MEMORANDUM IN SUPPORT OF MOTION

1. JURISDICTION

A. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334 and by the Order of Reference in this District. Venue of the Debtors' Chapter 7 case is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding under 28 U.S.C. §157(b)(2). The bases for the relief sought herein are §105 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2004, 4002, 7004, 7034, 7045, 9014, 9016, 9020, and Local Bankruptcy Rule 4002-1.

B. The Debtors filed a Chapter 7 case on August 31, 2016 of record as Case No. 16-55712 (the "Chapter 7 Case").

C. The Trustee was appointed as Trustee in the Chapter 7 Case by the U.S. Trustee pursuant to the provisions of 11 U.S.C. §701.

D. The Trustee conducted the meeting of creditors in the Chapter 7 Case on October 6, 2016.

2. BACKGROUND

A. The Debtors own the Real Property. The Debtors, however, are not living at the Real Property, so the Real Property is not subject to a homestead exemption.

B. OneMain Financial holds a mortgage on the Real Property, which is estimated to be in the amount of $35,000.

C. The Real Property was damaged by a break-in. Certain contents were damanged and/or stolen during the break-in.

D. The Debtors then submitted the Insurance Claims with Auto-Owners Insurance. The Insurance Claims are property of the bankruptcy estate in the Debtors' Chapter 7 Case pursuant to the provisions of 11 USC § 541.

E. Accordingly, the Trustee needs to investigate the Insurance Claim. Since March 7, 2017, the Trustee and/or his counsel have made multiple attempts to acquire this information from the Insurance Representative. The Insurance Representative has failed to provide a single responsive document to the Trustee and/or his counsel.

3. LEGAL BASIS FOR THE RELIEF REQUESTED IN THE MOTION

A. Federal Rule of Bankruptcy Procedure 2004 provides that, upon the motion of any party in interest, the Court may order the examination of **any entity** with respect to the following:

1. The Debtors' acts, conduct, or property;
2. The Debtors' liability or financial condition; or
3. Any other matter that may affect the administration of the Debtors' bankruptcy estate or the right of the Debtors to receive a discharge in this case.

Section (c) of Rule 2004 states in relevant part as follows:

> The attendance of an entity for examination and for the **production of documents**, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

Federal Rule of Bankruptcy Procedure 2004(c) [emphasis added].

B. Any interest of the Debtors in the Insurance Claims constitutes property of the Debtors' bankruptcy estate pursuant to 11 U.S.C. §541.

C. The Requested Documents relate to property of the Debtors' bankruptcy estate and are matters that affect the administration of the Debtors' bankruptcy estate. Accordingly, these matters are the proper subject of a Rule 2004 Examination.

D. Federal Rule of Bankruptcy Procedure 2004 also specifically permits the Court to order that documents be produced in conjunction with the proposed examination. The review of the Requested Documents is necessary for the Trustee to determine what action needs to be taken to administer assets in this case. Therefore, the Requested Documents and information are within the proper scope of examination provided for by Rule 2004 and the Requested Documents should be produced.

E. Further, Federal Rule of Bankruptcy Procedure 7034 is applicable to this Motion and may be used as a basis for the Court to compel the Insurance Representative to produce the Requested Documents. The Motion is a contested matter pursuant to the provisions of Federal Rule of Bankruptcy Procedure 9014, which states in relevant part as follows:

> (a) Motion. In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable opportunity for hearing shall be afforded the party against whom relief is sought.

Federal Rule of Bankruptcy Procedure 7034 applies to contested matters and states that Federal Rule of Civil Procedure 34 is applicable to contested matters. Federal Rule of Civil Procedure 34 provides that persons, **whether or not parties**, may be required to produce documents and things in a manner which is consistent with Federal Rule of Civil Procedure 45. Rule 45 provides that when a statute of the United States provides for the production of documents that the Court may issue a subpoena that can be effectively served outside of the district. The Federal

Rules of Bankruptcy Procedure are promulgated pursuant to the provisions of 28 U.S.C. §2075. Accordingly, any requirement to produce documents that is contained in any Federal Rule of Bankruptcy Procedure (including Rule 2004 and Rules 7034 and 7045) is required by a United States statute and the nationwide service of subpoena provisions of Federal Rule of Civil Procedure 45 is applicable. The Insurance Representative resides in the United States and in this District.

This is the basis for the request that the Court order that the manner of service of the Order granting this Motion shall be effective for all purposes under the Bankruptcy Code and Rules.

Production of the Requested Documents is also appropriate for the reasons in this section.

4. CONCLUSION

For the reasons stated, the Court should compel the Insurance Representative to appear at the Rule 2004 Examination and to produce the Requested Documents.

Accordingly, it is appropriate and necessary for the Court to enter an Order granting the Motion.

Respectfully submitted,

/s/ David M. Whittaker
David M. Whittaker, Esq. (0019307)
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
Phone: (614) 227-2355
Fax: (614) 227-2390
dwhittaker@bricker.com
Attorney for David M. Whittaker, Trustee

NOTICE OF MOTION BY DAVID M. WHITTAKER, TRUSTEE, FOR AN ORDER REQUIRING ADAM LONCZAK TO (1) APPEAR AND BE EXAMINED PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 AND (2) PRODUCE DOCUMENTS

Notice is hereby given that David M. Whittaker, Trustee, has filed a Motion for an Order Requiring Adam Lonczak to (1) Appear and Be Examined Pursuant to Federal Rule of Bankruptcy Procedure 2004 and (2) Produce Documents.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to approve this Motion, then within twenty-one (21) days of the date of this Notice, you or your lawyer must:

File with the Court a written response to the motion, explaining your position at:

U.S. Bankruptcy Court Clerk
170 North High Street
Columbus, OH 43215

or file your response by the Court's ECF filing system.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before twenty one (21) days from the date of the mailing of this motion and notice.

You must also mail a copy to or serve a copy using ECF service upon:

David M. Whittaker, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215
dwhittaker@bricker.com

United States Trustee
170 North High Street, Suite 200
Columbus, OH 43215
ustpregion09.cb.ecf@usdoj.gov

If you, or your attorney, do not take these steps, the Court may decide that you do not oppose the action requested and may enter an Order granting the Motion without additional notice or a hearing.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Rule 2004 Examination was served upon the following parties in the manner indicated on May 3, 2017.

/s/ David M. Whittaker
David M. Whittaker, Esq.
Attorney for David M. Whittaker, Trustee

The following parties were served by ECF at the email address registered with the Court:

U.S. Trustee

Marshall D. Cohen, Esq.

The following parties were served by U.S. mail at the address indicated:

David Michael Crotty
270 Stocksdale Drive, Apt. 3D
Marysville, OH 43040

Teresa Sue Crotty
270 Stocksdale Drive, Apt. 3D
Marysville, OH 43040

Adam Lonczak
Tomlinson Insurance Agency, Inc.
90 W. Main St.
Chillicothe, OH 45601